

Glossary

Introduction

This glossary is applicable to the Enforcement Branch Agricultural Civil Penalty and Structural Civil Penalty Programs and California's Pesticide Regulatory Program.

**General
information**

- Latin phrases are included because they sometimes appear in training materials and literature regarding administrative hearings.
 - As a general rule, Latin phrases should not be used in your documents without clarification because their meanings may not be commonly understood.
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Terms

3CCR: Title 3, California Code of Regulations pertaining to Food and Agriculture (see also *California Code of Regulations*).

4CCR: Title 4, California Code of Regulations pertaining to Business Regulations (see also *California Code of Regulations*).

8CCR: Title 8, California Code of Regulations pertaining to Industrial Relations (see also *California Code of Regulations*).

16CCR: Title 16, California Code of Regulations pertaining to Professional and Vocational Regulations (see also *California Code of Regulations*).

§: Section of legal code

§§: Sections of legal code

Terms, Continued

-A-

Abuse of Discretion: A standard applied by appellate courts when reviewing the exercise of discretion by trial courts and administrative agencies.

ACP: Agricultural Civil Penalty or Administrative Civil Penalty.

Action: An enforcement activity. The adjective used in front of the word defines the type, e.g., a civil action, a criminal action, etc.

Adjourn: To postpone, disperse or put off until a later time.

Adjudicate: To consider and pass judgment on a controversy based upon evidence.

Admissible evidence: Information that can be received into court or at a hearing to aid in deciding a case.

Advocate: A person who assists, defends, or pleads a cause or case for another person or entity.

APA: Administrative Procedure Act.

Agricultural Civil Penalty: A penalty levied for certain violations of the Food and Agricultural Code or Title 3 of the California Code of Regulations. This penalty activity is authorized by Food and Agricultural Code section 12999.5. Also known as “ACP”.

ALJ: Administrative Law Judge. Administrative Law Judges are not required for administrative civil penalty hearings initiated pursuant to FAC section 12999.5 or B&P Code section 8617.

Allegation: Assertion of fact not yet proven.

Appeal: A request made after the administrative hearing by a party that has lost on one or more issues. To make a request for review is “to appeal.” The higher authority, in our case, the Director of DPR (Director) or the Structural Pest Control Board’s Disciplinary Review Committee (DRC), reviews the administrative hearing decision to determine if it was correct. In our case, the Director or the DRC will rely upon the Hearing Officer to be the “trier of fact.” Although they may review whether or not there was substantial evidence for the Hearing Officer to have made a finding, the trier of fact may make a determination about legal issues. When the respondent appeals the Hearing Officer’s decision, or the Director or DRC’s decision, he or she is then referred to as the appellant.

Appellant: The party who appeals to the Director or a reviewing court.

Arbitrary: Not according to a fixed standard, but resulting from one's opinion or will.

Terms, Continued

-A- (Continued)

Assure: 3CCR section 6000 defines "assure" as taking all reasonable measures so that the behavior, activity, or event in question occurs. Merriam-Webster's Collegiate® Dictionary provides a more succinct definition: "assure" means "to make sure or certain."

Attest: To declare and affirm as true.

Terms, Continued

-B-

B&P Code : Business and Professions Code.

Best Evidence Rule: A rule of law which requires that when a written document is introduced into evidence, the original document shall be provided. If the original document is not available, its absence must be reasonably explained. An original case file is “best evidence;” a photocopy of the case file is “secondary evidence.”

Bias: A preconceived opinion.

Burden of proof: The duty to demonstrate the required degree of truth of one’s claim. In an administrative civil penalty hearing the burden of proof is on the agency. For administrative civil penalty hearings initiated pursuant to FAC section 12999.5 or B&P Code section 8617, the burden of proof is “by a preponderance of the evidence”.

Terms, Continued

-C-

CAC: County Agricultural Commissioner

California Code of Regulations (CCR): A series of regulations (or rules) that have been formally adopted by state agencies, reviewed and approved by the Office of Administrative Law, and filed with the Secretary of State.

Case: Commonly used to describe a suit or action of law.

Causation: The force that prompts something to happen.

CC: Civil Code

CCP: Code of Civil Procedure

CCR: California Code of Regulations

Cease and desist: To stop or discontinue ongoing or periodic activity. There are various cease and desist authorities in the Food and Agricultural Code.

CFR: Code of Federal Regulations

Chain of custody: The act of persons handling the evidence between the commission of the alleged offense and the ultimate disposition of the case. Each transfer of this evidence should be receipted (signature, time, and date of transfer). The chain of custody is sometimes referred to as the “chain of evidence”. These terms can be used interchangeably. You will find a chain of custody or chain of evidence form on the reverse side of most DPR-issued sample collection forms.

Circumstantial evidence: Evidence of facts or circumstances from which the existence or non-existence of a fact in issue may be inferred. Circumstantial evidence is not a less valuable form of evidence than other forms of evidence. However, the reliance on circumstantial evidence requires the Advocate be prepared to show that the sum of the circumstances are reliable and credible enough so that an ordinary person can make a determination that the existence or non-existence of a fact can be inferred.

Claim: A demand; an assertion of a right.

Code: A compilation of laws.

Competent: Qualified or capable of doing a certain act; in a hearing context, legally able to understand and testify capably.

Terms, Continued

-C- (Continued)

Complaint: The first pleading, filed by the plaintiff, in a civil action.

Compliance Action: An activity to document and notify a person of a non-compliance with applicable laws or regulations. Compliance Actions give “notice” to the violators about their violative behavior, but do not automatically result in a punitive action. On a statewide basis, Compliance Actions are weighted equally. Examples of Compliance Actions are: Warning Letters (WL); Violation Notices (VN); Notices of Violation (NOV); inspection forms with one or more non-compliances noted; and Documented Compliance Interviews. Imposition of “Public Protection Options” by the Director or CACs are considered Compliance Actions.

Compliance interview: An interview ("talk") with the county agricultural commissioner (or agent). The compliance interview is informal and undocumented. A compliance interview, while beneficial, is an educational tool and is not considered a Compliance Action or an Enforcement action.

Compromise: Mutual concessions by both parties in order to settle a dispute.

Contempt: A willful disregard or disobedience of a public authority. In a court context, disobedience of a judge's order.

Continuance: Postponement of an action.

Controversy: A dispute involving an allegation on one side and a denial on the other.

Counsel: An attorney who represents a client.

County Agricultural Commissioner (CAC): A county department head appointed by the county board of supervisors and licensed by the State of California to carry out various county and state agricultural, environmental, and pesticide worker safety and consumer protection programs, including local responsibility for pesticide use enforcement.

Credible: Worthy of belief.

Cross examination: Interrogation of a witness by the opposing counsel after questioning by the side who introduced the witness.

Culpable: Deserving of blame; at fault.

Terms, Continued

-D-

Date of delivery (delivery of notice): Date actually delivered by the post office, as documented on the return receipt.

Date of notice: Date noted on the Notice (e.g., Notice of Proposed Action, Notice of Decision).

De facto: (Latin: "In fact, actually, in reality.") De facto segregation, for example, simply occurs.

De minimis: (Latin: "Insignificant; minute.") Frivolous; i.e., not of sufficient importance to be dealt with by law.

Decision: A judgment or decree pronounced in settlement of a controversy; and/or, an authoritative answer to the questions raised before it. Also known as the "Notice of Decision" or "Final Decision."

Decision Report: Describes the factors of a decision. The Decision Report may be prepared in a variety of formats, including a narrative report, a letter, or an inter-office memorandum. A sample decision report form is provided in the Enforcement Guidelines. The sample form may be utilized, adopted, or revised by each county as they wish.

Default judgment: A ruling against a party because of his failure to respond adequately to procedural requirements such as an order to appear in court.

Demonstrative Evidence: Visual aids used to help clarify oral testimony. Examples of demonstrative evidence include: maps, diagrams, photos, charts, data graphs and video taped recordings.

DHS: Department of Health Services

Direct examination: The first questioning of a witness by the party that called the witness. (see *Cross Examination*.)

Director: Director of the Department of Pesticide Regulation.

Disciplinary Review Committee: The legislatively mandated Committee which hears structural licensee appeals of administrative civil penalty actions. The Disciplinary Review Committee is comprised of three members -- a representative from the Department of Consumer Affairs' Structural Pest Control Board; a representative from the Department of Pesticide Regulation; and a representative from the structural pest control industry.

Discovery: Consists of pre-trial procedures in which both parties obtain information about the claims and defenses asserted by their opponent.

Terms, Continued

-D- (Continued)

Discretion: Power or privilege to act unhampered by a legal rule. When applied to public functionaries, it means wise conduct and management.

Dismissal: Termination or cancellation.

Disposition: A final settlement. Satisfaction of a debt.

Division 6: Division 6 of the Food and Agricultural Code (specifically Food and Agricultural Code sections 11401 through 12499) pertaining to Pest Control Operations.

Division 7: Division 7 of the Food and Agricultural Code (specifically Food and Agricultural Code sections 12500 through 16000) pertaining to Agricultural Chemicals, Livestock Remedies, and Commercial Feeds .

Documentary evidence: Evidence supplied by writings and documents of every kind, e.g., photographs, diagrams, maps, and forms.

Documented compliance interview: An interview which documents a discussion between a person and the county agricultural commissioner (CAC) (or agent) about a specific noncompliance committed by the regulated person. A documented compliance interview typically is held at the CAC's office. A documented compliance interview must note the date, time, location, parties present, activity which precipitated the interview, noncompliance or violation, and proposed corrective action(s). A summary of the documented compliance interview is typically mailed to the parties that were present. An interview that does not result in some sort of document summarizing the interview, to be attached to the file or inspection report, would not be considered a documented compliance interview.

Double jeopardy: Being tried twice for the same crime. Double jeopardy is prohibited by the Fifth Amendment to the U.S. Constitution.

DPR: Department of Pesticide Regulation

Drift: The pesticide that moves through the air and is *not* deposited on the target area at the time of application. Drift *does not* include the movement of pesticide and associated degradation compounds off the target area, such as by translocation, volatilization, evaporation, or the movement of pesticide dusts or pesticide residues on soil particles that are windblown after the application.

Due care: The degree of care that a prudent and competent person engaged in the same line of business or endeavor would exercise under the same or similar circumstances. When a person does not exercise due care, they are considered *negligent*.

Terms, Continued

-D- (Continued)

Due process of law: A concept first introduced in the Fifth Amendment to the U.S. Constitution that has come to be equated with current attitudes of fairness in the legal process. In its most basic interpretation, “due process” means an orderly proceeding adapted to the nature of the case, a proceeding in which the individual receives adequate notice of a proposed governmental action, and has the opportunity to be heard and defend his or her conduct. In essence, “due process” is fundamental fairness within our quasi-judicial hearing process.

Duty: Conduct owed by obligation to another. Legally, a sanctioned obligation which, if breached, makes the offending party liable, regardless of the existence of a contract.

Terms, Continued

-E-

EC: Evidence Code

Educational and monitoring tools: An activity or document used to determine or encourage compliance. Educational and monitoring tools benefit the public. Informal compliance interviews or formal presentations by regulators to the regulated public and increased inspection activities are examples of educational or monitoring tools. Educational and monitoring tools are not compliance actions.

Effect: The result or consequence of an action. Application of “effect” in applying Fine Guidelines: An actual or environmental effect may support a finding that a violation could have created an actual health or environmental effect; however, it is not required that an actual health or environmental effect occur in order for a violation to be classified as Class B (formerly *moderate*) or Class A (formerly *serious*). (see *Fine Guidelines*.)

Elements of the violation: The summary of actual requirements that must occur in order to prove a violation occurred.

Enforcement Action: An action to document, notify, and penalize the violator for an activity not in compliance with applicable laws or regulations. An Enforcement Action must provide the respondent/violator with notice and an opportunity to be heard before a sanction or penalty is enforced. Examples of frequently used Enforcement Actions are: Administrative Civil Penalties, in the form of Agricultural Civil Penalties (ACP) or Structural Civil Penalties (SCP); revocation or suspension of county registration; and refusal, revocation or suspension of a restricted materials permit. Examples of more aggressive Enforcement Actions are: A formal request to the Department of Pesticide Regulation or Structural Pest Control Board to initiate a licensing action; formal referral to a District or City Attorney for civil or criminal adjudication; or a formal request by the Department of Pesticide Regulation to the Office of the Attorney General.

A Cease and Desist Order or a Crop Destruct Order is not an Enforcement Action. A Cease and Desist Order is a mitigation measure to protect the public from known or unknown hazards. Cease and Desist Order/Crop Destruction Order are actions authorized by the Legislature for the purpose of immediately protecting the public health or environment. In terms of the *Enforcement Guidelines*, the above-mentioned orders can be referred to as Public Protection Options.

Terms, Continued

-E- (Continued)

Enforcement Guidelines: The Enforcement Guidelines concept is a method of describing and categorizing a violation for the purpose of encouraging uniform enforcement responses. Examples of Enforcement Guideline categories are: General, Substantive Possible and Substantive Actual. Some requirements can be characterized by more than one category; the category could change, depending on the circumstances of the violation. The Enforcement Guidelines were approved by the Department of Pesticide Regulation and the California Agricultural Commissioners and Sealers Association in December 1994; a Technical Revision was approved in December 2002.

Environmental effects: Refers to any damage, either permanent or temporary, to public or private property; or, to the creation of deleterious effects to air or water quality. Examples of environmental effects include: crop damage, loss of use of public or private property, bee kills, livestock poisoning, residues that affect the marketability of a crop, fish or wildlife kills, and contamination of land, water or air. (see *Effect*.)

Erroneous: Mistaken; or, deviating from requirements of law, as opposed to illegal; or, lacking legal authority.

Errors: (see *Harmless Error*.)

Et seq.: (Latin: “and those that follow.”) Abbreviation for “et sequentes.” For example, “3CCR section 6700 et seq.” would mean “3CCR section 6700 through 6795,” or “all of the sections pertaining to worker safety that follow 3CCR section 6700.”

Ethics: The standards of conduct, honesty, and morality expected of those practicing a particular profession.

Evidence: The entire means used at trial or in an investigation in order to prove or disprove any alleged fact.

Ex parte: (Latin: "In part.") A proceeding that involves consideration of one side's approach only, without notification of the adverse party. An example of ex parte communication would be when a county agricultural commissioner attempts to influence a Hearing Officer's decision after the Respondent has left the hearing site. Essentially, the Respondent is not given the opportunity to respond to the additional information.

Terms, Continued

-E- (Continued)

Expert witness: An expert witness is one who is recognized as having special knowledge, training, experience, skill, or education on the subject he/she testifies on. The expert witness may be called upon to state their opinions on a matter where the “trier of fact” himself/herself cannot form an opinion because he/she does not possess the specialized qualifications required to do so. The expert witness is permitted to state his/her opinion concerning those technical subjects even though he/she was not present at the time the activity or incident in question took place.

Terms, Continued

-F-

FAC: Food and Agricultural Code.

Fact: An event deemed proven; anything that has been done or that has existed.

Fair: Equitable; reasonable.

Familiar: Known or no longer novel. (see *Unfamiliar*.)

Fault: The responsibility for negligence or a mistake.

FIFRA: Federal Insecticide, Fungicide, and Rodenticide Act

Final Decision: (see *Decision*.)

Findings of fact: The findings of a trier of fact (hearing officer, judge or jury) on issues of fact submitted to it for decision. The findings of fact are used in formulating a determination or judgment.

Findings of law: The findings of a judge (or in our case the Director or DRC) on how the law applies to the facts of the case.

Fine : To impose a monetary penalty as a punishment for a violation; a monetary penalty.

Fine guidelines: The California Legislature authorized the levy of administrative civil penalties in the mid 1980's (Agricultural - FAC section 12999.5; Structural - B&P Code section 8617). The Legislature's authorization was contingent upon the development of fine guidelines to encourage consistent application of this enforcement tool. Today, county agricultural commissioners are required to follow the fine guidelines when levying a civil penalty pursuant to FAC section 12999.5 or B&P Code section 8617. Fine guidelines are located by regulation in 3CCR section 6130 (Agricultural Civil Penalties) and 16CCR section 1922 (Structural Civil Penalties).

Form: A model document containing the legally accepted words that make the paper procedurally correct.

Formal referral: A letter to another agency requesting assistance. A formal referral should contain factual information, an analysis of the problem, a summary of actions taken by the initiating agency to date, and a request for assistance.

Terms, Continued

-G-

GC: General Code

General Violation: A General Violation does not pose a direct threat to health, property, or the environment. General Violations are true paperwork oversight violations. General Violations usually fall into the Class C (formerly *minor*) or Class B (formerly *moderate*) fine categories.

Good cause: Legally sufficient reason for taking some action.

Good faith: Absence of any intent to defraud or take unfair advantage of another; a sincere, honest effort to fulfill an obligation.

Terms, Continued

-H-

Harm: Hurt, damage or injure. **Application of “harm” when applying fines:** Actual health or environmental harm may support a finding that a violation could have created or did create actual health or environmental harm; however, it is not required that actual health or environmental harm occur to prove that a hazard existed, and it is not required that an actual health or environmental harm occur in order for a violation to be classified as Class B (formerly *moderate*) or Class A (formerly *serious*). (see *Fine guidelines*.)

Harmless error: A minor mistake in a judicial proceeding which does not justify an appellate body modifying or overturning the decision.

Hazard: A source of danger. **Application of “hazard” when applying fines:** An actual health or environmental effect may support a finding that a violation could have created or did create an actual health or environmental hazard; however, it is not required that an actual health or environmental effect occur to prove that a hazard existed, and it is not required that an actual health or environmental effect occur in order for a violation to be classified as moderate or serious. (see *Fine guidelines*.) Hazard, as used in 3CCR section 6130, means “a source of danger” or a “risk.”

Hearing: A proceeding in which both parties have an opportunity to be heard; and, in which an issue of fact is decided. This term is frequently used in a broader sense in that it also can be used to describe proceedings that take place before a public functionary who has been granted judicial powers. Some statutes require that boards and departments follow Administrative Procedure Act (APA) guidelines and procedures for hearings; however, FAC sections 12999.4, 12999.5, and 12999.6 or B&P Code section 8617 do not mandate the use of APA guidelines and procedures.

Hearing Officer: The presiding officer of an administrative hearing. Some statutes require that boards and departments use an Administrative Law Judge (ALJ) for administrative hearings; however, FAC sections 12999.4, 12999.5 and 12999.6 or B&P Code section 8617 do not mandate the use of an ALJ.

Hearsay evidence: A rule stating that any testimony from a secondhand witness is unreliable and cannot be used in a court of law or legal proceeding. A secondhand witness is someone who did not actually see the event, but heard about it later from a person who was there (an eyewitness). Administrative hearings allow several exceptions to the Hearsay Rule.

Terms, Continued

-I-

Immaterial: Without relevance or pertinence to the matter under consideration.

Implied: Not explicitly expressed in writings or words, but determined by deduction from known facts or evidence.

Incident: An occurrence when one or more noncompliances are found during an activity such as an inspection, investigation, follow-up, etc. The activity may be limited to a single routine inspection or audit, or it may include several inspections and the collection of evidence, as in the case of a complicated episode investigation. Noncompliances found during the incident are divided into the categories of General, Substantive Possible, and Substantive Actual.

Independent Employee Action Defense (IEAD): A defense that may be raised by an employer when the employer is being blamed for the deed or misdeed of its employee in regard to employee safety. If the employer does not raise the defense, it need not be considered. The CAC is not required to consider it unless it is raised and its requirements established.

Interrogation: Questioning a person suspected of having committed an offense or questioning a person who is reluctant to disclose information pertinent to the investigation.

Interview: A conversation in which facts or statements are elicited from another.

Terms, Continued

-J-

Judgment: The final decision of a court on a matter brought before it.

Jurisdiction: A court or agency's legal authority to hear and determine a case, either by virtue of power over the subject matter of the controversy or over the parties.

Terms, Continued

-K-

Key Elements of California's Pesticide Regulatory Program: Requirements for the following programs are enforced to protect the health and safety of Californians and their environment: Restricted Materials Permit Program; Licensing and Certification Program; and the Worker Health and Safety Program. Failure to adhere to these requirements often results in health or environmental hazards or effects.

Terms, Continued

-L-

Law: The body of government-enacted rules of conduct that govern individuals in a society.

LC: Labor Code.

Legal: Of, or relating to, the law.

Levy: A tax or a fine; to assess.

License: A right or permit granted someone that enables him/her to do something he/she could not legally do without permission.

Terms, Continued

-M-

Matter of record: Something provable by checking existing papers or documents.

Material: Important or necessary.

Material fact: Information necessary to decide a case or to enter into a contract.

Material witness: A person who can provide key information in a hearing or trial.

Mitigating circumstances: Conditions that do not completely exonerate a defendant, or justify or excuse certain actions of the offense in questions, but which reduce the punishment or fine.

Mitigation: Reduction or lessening the amount of a penalty or punishment.

Motive: Cause or reason behind some act; an inducement to commit an act.

Terms, Continued

-N-

Nature of the violation: The circumstances of the violation which identify the "who, what, when, where, why, and how."

Negligence: Failure to act with an acceptable or reasonable amount of care in a given situation.

Negotiation: The act of settling or arranging the terms and conditions of a transaction; a discussion or conference on the terms of a proposed agreement.

Non-compliance: Failure to comply with any law or regulation. A noncompliance may be documented in forms, hearings, interviews or letters. (see *Violation*.)

NOPA: Notice of Proposed Action

Notice: Information, or knowledge of existence of a fact.

Notice of Proposed Action (NOPA): A document which is used to inform the Respondent of the action that the county agricultural commissioner intends to take, offering the Respondent an opportunity to be heard.

Notice of Violation (NOV): (see *Violation Notice*.)

Terms, Continued

-O-

Oath: A promise made by a witness to tell the truth. A person making an oath does not have to “swear” to tell the truth, but only to “promise” to tell the truth.

Official Notice: When the Hearing Officer, upon request, makes a statute, regulation, or official publication part of the hearing record. When this is done, it is not necessary to introduce the text as an exhibit.

Oral warning: Oral instructions or warnings that are not documented or filed. An oral warning, while possibly beneficial, is not considered a Compliance Action or Enforcement Action.

Order: An “order” is a command, direction, or instruction of a judge, court, adjudicating officer, or agency. In this case, the “order” is written and is delivered by the county agricultural commissioner in the context of a civil penalty action. FAC section 12999.5 and B&P Code section 8617 authorize the county agricultural commissioner to levy a fine and “order” the fine be paid.

Terms, Continued

-P-

Party: A person or organization that takes part or holds an interest in any legal matter or proceeding.

Pending: Not yet decided.

Per se: (Latin: "By itself.")

Plaintiff: The person who initiates a suit; the party bringing a court or agency action.

Possible: "Possible," as used in 3CCR section 6130, means that the event is "capable of happening without contradicting proven facts, laws, or circumstances." However, the degree of likelihood is not implied by this term. "Possible" implies any condition between a "moderate degree of probability" to "the barest change within the limits of the circumstances."

Postponement: Delay or adjournment.

Pre-hearing discussion: A discussion or conference, with all parties present, before a hearing to attempt to agree or stipulate to certain facts. A pre-hearing discussion is not a settlement negotiation. Witnesses, who are not parties to the matter, should not be allowed in the pre-hearing discussion

Preponderance: Superiority in weight, importance or influence.

Preponderance of the evidence: The standard of proof in general civil and administrative cases; the version of facts more likely to be true than not. Preponderance of the evidence also can be described as "the greater weight of the evidence," or "superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue than the other." In a civil trial, the jury is instructed to find for the party that, on the whole, has the stronger evidence, however slight the edge may be. (*see Proof.*)

Proof: Technically, proof is the establishment of a fact by evidence. In the broader sense, it is the logically sufficient reason to convince the mind of the truth or falsehood of a fact. There are many "standards of proof." The standard of proof which applies to administrative and civil actions is "a preponderance of the evidence." This should not be confused with "beyond a reasonable doubt" (also known as "entirely convincing") which is the standard of proof for criminal actions.

Proposed Decision: A decision issued by a Hearing Officer who is not the CAC or Director.

Proximate cause: That which produces an event without which the injury would not have occurred.

Terms, Continued

-P-

Public Protection Option: An action initiated for the purpose of immediately protecting public health or safety. Public Protection Options are not penalties in and of themselves, although they may temporarily have the effect of a punishment. They usually require an additional action to become a permanent punishment. Examples of Public Protection Options are: Cease and Desist Orders; Seize/Hold Produce Orders; Crop Abatement Orders; Crop Seizure; Prohibit Harvest Orders; and Pesticide Seizure.

Terms, Continued

-R-

Reasonable: “Reasonable,” as used in 3CCR section 6130, means “within the bounds of common sense; not excessive or extreme; fair; and moderate.” For the purposes of this discussion, a person with an average capacity for rational thought, inference, and logical thinking is considered to possess “common sense.”

Rebuttal evidence: Anything that tends to disprove, overcome, or dispel previously offered evidence or legal presumptions.

Relevant: To the point, describing matters dealing with the pertinent points of a case.

Reliance: Trust, confidence, dependence upon what is considered sufficient trust or authority. Detrimental reliance prompts an individual to take steps that worsen his position.

Repeat violations: The currently alleged violation shall be considered a repeat violation if the following criteria are met: 1) The person against whom the violation is proposed had a prior violation that was in the same class (Class A [formerly *serious*], Class B [formerly *moderate*], or Class C [formerly *minor*]) as the currently alleged violation; AND, 2) A civil penalty was levied for the prior violation within two years of the date of the Notice of Proposed Action by the county proposing the current action.

Repeat violation ? See *3CCR section 6130, Civil Penalty Actions by Commissioners* (formerly known as the *Fine Guidelines*).

Respondent: A term used to describe the person who is the subject of an action to fine or punitive licensing action and must respond to the charges against him/her. The word may also refer to someone who, after having won a case which is then appealed, must respond to that appeal. For example, when a case upheld by the Director or the DRC is appealed to the Superior Court, DPR or the DRC becomes “the respondent.”

Reversible error: An erroneous judgment or ruling by a Hearing Officer or court that substantially affects the appellant's legal rights and would lead, if uncorrected, to a miscarriage of justice.

Terms, Continued

-S-

SCP: Structural Civil Penalty

Sensitive site: A location determined by the county agricultural commissioner or Director based upon his/her evaluation, to contain things that could suffer harm or injury from the pesticide in question, such as sites containing people, crops where minor amounts of residue can cause harm, honey bees, wildlife sanctuaries, etc.

Settlement: The resolution or disposition of a matter by agreement or compromise before a trial.

Should and shall be considered: Refers to an evaluation of all available evidence, including, but not limited to, violation history, intent, willfulness, and seriousness of the violation, in determining the appropriate level of action.

Statement: An allegation. The term is popularly used to describe narratives.

Statute: A law enacted by a legislature.

Statute of limitations: Time period after an incident occurs during which a lawsuit may be filed regarding the incident.

Statutory: That which is governed by statute (act of legislature) as opposed to the common law or equity.

Stipulation: A stipulation is a voluntary agreement between opposing parties concerning some relevant point. Stipulations with respect to matters of fact, law, or penalty amount make the hearing more convenient and expedient for both the county and the Respondent. Matters that are the subject of a stipulation are no longer in dispute or contested and need not be addressed at the hearing.

Structural Civil Penalty: A penalty levied for certain violations of the Business and Professions Code or Title 16 of the California Code of Regulations. Also known as "SCP".

Structural Pest Control Board (SPCB): The Structural Pest Control Board is under the jurisdiction of the California Department of Consumer Affairs.

Subpoena: (Latin: "put or call in place.") A written order of the court which compels a witness to appear or produce documents. Hearing Officers (unless they are ALJs) do not have the authority to issue subpoenas.

Subject: In the investigation sense, the person (witness or suspect) who is being interviewed or interrogated and not necessarily the subject of the case under investigation. Where the two terms will differ, the distinction will be apparent from the phrasing and the context.

Terms, Continued

-S- (Continued)

Subsequent incident: An incident that takes place later and is separate from another incident. Noncompliances found during the later incident do not have to be violations of the same law or regulation in order for the later incident to be considered "subsequent"; however, a subsequent incident would not occur more than two years after the date of the first incident because of the statute of limitations. *Note the timing difference between subsequent incident and the requirement for Repeat Violation found in 3CCR section 6130, Civil Penalty Actions by Commissioners (formerly known as the Fine Guidelines).*

Subsequent incident is an Enforcement Guidelines concept that should be used to determine what type of action to initiate when a violation occurs. Subsequent incident should not be confused with Repeat Violation, a concept to be considered in determining a fine category

Subsequent incident ? See *Enforcement Guidelines*

Substantial drift: The quantity of pesticide outside the treated target area is greater than that which would have resulted had the applicator used due care (3CCR section 6000).

Substantial evidence: Substantial evidence is evidence upon which a reasonable person would rely in a serious matter. All that is required is enough evidence to establish the violation cited in the County's Notice of Proposed Action.

Substantial Evidence Test: The Substantial Evidence Test requires only enough relevant information and inferences from that information to support a conclusion, even though other conclusions might also have been reached. In other words, the decision rendered by the Hearing Officer need not be the only possible interpretation of the evidence submitted. The decision must simply be a reasonable interpretation of the evidence presented. The Director and the Disciplinary Review Committee rely upon the Substantial Evidence Test to make a determination about the findings and decision of a Hearing Officer if the matter is forwarded to them for review or appeal.

Substantive Violation: A violation which poses a threat to health, property or the environment. Substantive violations, by their nature, create unnecessary risks. Substantive Violations usually fall into the Class B (formerly *moderate*) or Class A (formerly *serious*) violation classes.

Suspect: A person whose guilt is considered on reasonable grounds to be a practical possibility.

Terms, Continued

-T-

Target area: When applying pesticides, the applicator has a particular target to apply the pesticide. The target is known as the *target area* and can be a field, orchard, water body, structure, kitchen counter top, pet, flower bed, lawn, etc.

Testify: To provide testimony.

Testimony: Evidence given by a witness at a hearing or other legal proceeding.

Title 3: Food and Agriculture, California Code of Regulations

Title 4: Business Regulations, California Code of Regulations

Title 8: Industrial Relations, California Code of Regulations

Title 16: Professional and Vocational Regulations, California Code of Regulations.

Trial: A proceeding before a competent tribunal to determine the facts and/or law in a dispute.

True hearing: (see *Hearing*.)

Terms, Continued

-U-

Unfamiliar: There is category of people who may not be Familiar with pesticide regulatory requirements because they are in a situation or business which does not traditionally require them to be familiar with pesticide regulatory requirements. Pesticide Use Enforcement staff must draw upon their own experience and knowledge of pesticide regulatory requirements to determine whether it is reasonable for a violator to be Unfamiliar with pesticide regulatory requirements. Examples of persons who are Familiar and persons who are Unfamiliar, are presented below:

- **Familiar:** A grower with a pesticide user identification number, a restricted materials permit holder, a certificate holder or a licensee is expected to know about pesticide use requirements; also, a person or business which has previously been the subject of a compliance or enforcement action is expected to know about pesticide regulatory requirements pertaining to their activities.
- **Unfamiliar:** Businesses such as restaurants, hospitals, schools, janitorial services, or employees of these groups (who have not been the subject of a compliance or enforcement action or otherwise exposed to pesticide regulatory requirements) may be considered Unfamiliar.

U.S. EPA: United States Environmental Protection Agency.

U.S. EPA Region 9: United States Environmental Protection Agency Region 9. California is included in Region 9. Region 9 covers the southwestern United States -- Arizona, California, Hawaii, Nevada, the Pacific islands subject to U.S. law, and approximately 140 tribal nations. U.S. EPA works with state, local, and tribal governments in the region to carry out the nation's environmental laws.

Terms, Continued

-V-

Variance: Special permission granted by a local zoning authority to allow a specific use of property which does not conform to current zoning laws. County Agricultural Commissioners do not have authority to issue a “variance” in relation to following laws, regulations, or permit conditions.

Violation: Failure to comply with any law or regulation. A violation may be documented by forms, hearings, interviews, or letters. (see *Non-compliance*.)

Violation class: Class A, Class B, or Class C, as defined by Title 3, California Code of Regulations section 6130. Formerly, violations were defined as serious, moderate, and minor.

Violation Notice: A Violation Notice (VN), also known as a "Notice of Violation" (NOV), is a written document which identifies the violator, inspector/biologist, location and date of occurrence, and applicable laws or regulations. A Violation Notice is typically a form, but may be presented in letter format. A Violation Notice is a Compliance Action.

Violation type: Formerly defined as serious, moderate, or minor. (see *Violation class*.)

VN: Violation Notice

Terms, Continued

-W-

Waiver: The voluntary relinquishment of a legal right or advantage. The party alleged to have “waived” a right must have had both knowledge of the existing right (in this instance, the right to a fair and impartial hearing) and the intention to give up that right.

Warning Notice: A Warning Notice (WN), also known as a "Notice of Warning" or "Warning Letter" is a written document which identifies the violator, inspector/biologist, location and date of occurrence, and applicable laws or regulations. A Warning Notice is typically in letter format, but may be noted on a form. A Warning Notice is a Compliance Action.

Warrant: A written order of the court authorizing a certain act, e.g., a search warrant. A written order directing the arrest of an individual (also known as a bench warrant). Our Hearing Officers do not have the authority to issue warrants.

Weight of evidence: The relative value of all evidence of one side of a dispute compared with all that on the other.

Withdraw: To remove.

Witness: One who gives evidence in a case before a hearing Officer or court.

Work for hire: Work done under contract to an employer, in which the employer is considered the creator of the work. A “paper contract” does not have to exist for a “contract” to exist. A contract may be verbal or implied.
